

**EXHIBIT A**

Page 1

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF MASSACHUSETTS

3  
4 In re: )  
5 PHARMACEUTICAL INDUSTRY ) CA No. 01-12257-PBS  
6 AVERAGE WHOLESALE PRICE ) MDL No. 1456  
7 LITIGATION )  
8

MOTION HEARING

9 BEFORE THE HONORABLE PATTI B. SARIS  
10 UNITED STATES DISTRICT JUDGE  
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United States District Court  
1 Courthouse Way, Courtroom 19  
Boston, Massachusetts  
May 22, 2006, 3:05 p.m.

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23 LEE A. MARZILLI  
24 CERTIFIED REALTIME REPORTER  
United States District Court  
1 Courthouse Way, Room 3205  
Boston, MA 02210  
25 (617) 345-6787

1 A P P E A R A N C E S:

2 For the Plaintiffs:

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## PROCEEDINGS

2 THE CLERK: In re: Pharmaceutical Industry Average  
3 Wholesale Price Litigation, Civil Action No. 01-12257, will  
4 now be heard before this Court. Will counsel please identify  
5 themselves for the record.

6 MR. PAUL: Nicholas Paul, Deputy Attorney General  
7 for the state of California.

8 MS. THOMAS: Susan Thomas, private counsel for the  
9 relator Ven-A-Care.

10 MR. BREEN: James Breen, counsel for the relator  
11 Ven-A-Care.

12 MR. MILLER: Adam Miller for the relator  
13 Ven-A-Care.

14 MR. TEMMERMAN: Thomas Temmerman, Senior Assistant  
15 Attorney General, California.

16 MB. SHAPIRO: Jonathan Shapiro for Ven-A-Care.

17 MR. DALY: Good morning, your Honor. Jim Daly on  
18 behalf of Abbott

191 MS. EUMERTON: Tara Eumerton on behalf of Abbott

20 MR. McDONALD: John McDonald on behalf of B. Braun  
21 of America

22 THE COURT: All right, so you're essentially the  
23 moving parties

24 MR. DALY: Yes, your Honor.

25 MR. PAUL: Excuse me, your Honor. There's one

1 is also a false claim, and it is entirely consistent with our  
2 first theory.

3 I would respectfully submit, your Honor, that we  
4 have pled this -- as far as the particularity of the conduct,  
5 we've attached hundreds of pages. I don't know that your  
6 Honor has received a pleading in this case yet with as much  
7 detail about the false price representations that the  
8 manufacturers made, and the actual backup evidence of why  
9 it's false, and how the state knows it's false for each NDC  
10 number, for each period of time, for each company.

11 THE COURT: Well, I think what they're saying is  
12 that you should give me at least one claim. So you're the  
13 state. Give me one false claim for each category. Is that  
14 what you're saying?

15 MR. BREEN: Your Honor, if we were to attach -- I  
16 understand what they're saying.

17 THE COURT: I haven't actually gone that route  
18 but --

19 MR. BREEN: But if we're going to do that, I mean,  
20 if one claim or all the claims, all the claims we tried to  
21 figure it out, it would be five stories high at a minimum.

22 THE COURT: That's right, so I'm not going to  
23 require it. But let me just ask you this: Would you have an  
24 example of at least one for each kind of pricing fraud?

25 MR. PAUL: Your Honor, we can certainly provide

1 that if the Court determines that that would help the system.

2 THE COURT: I wouldn't want them all, and I  
3 wouldn't demand them all. The question is, I will ask them  
4 that question, so -- because unlike some of the other cases I  
5 have where they're the consumer class actions and they're the  
6 sick old people, you're actually the state of California, so  
7 I'm assuming you can come up with one example of each drug  
8 that was allegedly fraudulently billed. Is that right?

9 MR. PAUL: I appreciate your confidence, your  
10 Honor. We can.

11 THE COURT: Okay, is there anything else? We can  
12 do quick rebuttals, and then we can move on.

13 MR. BREEN: Your Honor, unless you have any other  
14 questions on ambiguity, we've briefed that thoroughly.

15 THE COURT: Ambiguity in the term?

16 MR. BREEN: Well, they're arguing that this was  
17 ambiguous or it was uncertain, or therefore they couldn't  
18 have made a false representation. And the case law was clear  
19 on this, your Honor. We put it in our brief. If the  
20 defendant is going to take the position that it was somehow  
21 misled or didn't know what was going on or things were too  
22 ambiguous, therefore it couldn't have made a false statement,  
23 that's a question of fact for the trier of fact. The  
24 defendants --

25 THE COURT: Well, all right, I understand what you

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UNITED STATES DISTRICT COURT )  
DISTRICT OF MASSACHUSETTS ) ss.  
CITY OF BOSTON )  
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I, Lee A. Marzilli, Official Federal Court  
Reporter, do hereby certify that the foregoing transcript,  
Pages 1 through 56 inclusive, was recorded by me  
stenographically at the time and place aforesaid in Civil  
Action No. 01-12257-PBS, MDL No. 1456, In re: Pharmaceutical  
Industry Average Wholesale Price Litigation, and thereafter  
by me reduced to typewriting and is a true and accurate  
record of the proceedings.

In witness whereof I have hereunto set my hand this  
15th day of June, 2006.

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LEE A. MARZILLI, CRR  
OFFICIAL FEDERAL COURT REPORTER